

the facts. For example, NMTV did not "misrepresent" that Rev. Aguilar was elected to the Board because of his broadcast

WHEREFORE, the foregoing considered, Trinity Broadcasting of Florida, Inc., respectfully urges that the Petition to Deny filed by Glendale Broadcasting Company and the Spanish American League Against Discrimination be expeditiously denied.

Respectfully submitted,

TRINITY BROADCASTING OF FLORIDA,
INC.

T. D. 100

INDEX TO EXHIBITS

1. NMTV Request for Declaratory Relief
2. Verified Statement of Allan Brown
3. TBN/NMTV Program Affiliation Agreements
4. Verified Statement of Mrs. Jane Duff
5. Verified Statement of Colby M. May
6. Verified Statement of Gregory R. Goodyear

EXHIBIT 1

COPY OF NMTV REQUEST FOR DECLARATORY RULING

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In Re: Request of:

NATIONAL MINORITY TV, INC.

Regarding Application of Multiple
Multiple Ownership Rule 73.3555(d),
The 14 Station Exception

TO: The Commission

RECEIVED

NOV 18 1991

Federal Communications Commission
Office of the Secretary

REQUEST FOR DECLARATORY RULING
OF NATIONAL MINORITY TV, INC.

BY: Colby M. Mav. Esq.

TABLE OF CONTENTS

	<u>Page No.</u>
Table of Contents	i
Table of Authorities	ii
Summary	iv
I. Factual Context	2
A. NMTV's Corporate Status and Background	2
B. NMTV's Management and Method of Operation	6
C. NMTV is Well Known to the Commission, and it has Twice Previously Been Approved to Acquire	

TABLE OF AUTHORITIES

FCC DECISIONS AND POLICY STATEMENTS

<u>Central Texas Broadcasting Company, Ltd.,</u>	
F.C.C.2d _____, 64 Rad. Reg. 2d (P&F) 332	
(M. Media Bureau 1987).	14
<u>Communications Properties, Inc.,</u>	92 F.C.C.2d 45
52 Rad. Reg. 2d (P&F) 981 (Rev. Bd. 1982)	34
<u>Farragut Television Corp.,</u>	8 F.C.C.2d 279,
10 Rad. Reg. 2d (P&F) 50, 54 (1967)	17
<u>Independent Masters, Limited,</u>	104 F.C.C.2d 178,
60 Rad. Reg. 2d (P&F) 835 (1986).	28
<u>James R. Serra,</u>	F.C.C.2d _____, 42 Rad. Reg.
2d (P&F) 73 (1977).	31
<u>Mississippi Authority for Educational TV,</u>	79
F.C.C.2d 577, 579, 47 Rad. Reg. 2d (P&F)	

47 U.S.C. § 309(i)(3)(A)	25
------------------------------------	----

ADMINISTRATIVE REGULATIONS

47 C.F.R. § 1.2.	1
47 C.F.R. § 73.3555(d)	1,12-13,15,17,22,25-28,35
47 C.F.R. § 73.3555(d)(1).	9,17
47 C.F.R. § 73.3555(d)(2).	18
47 C.F.R. § 73.3555(d)(3).	16,18,22,33

SUMMARY

NMTV is a nonprofit/nonstock corporation governed by its Board of Directors. It has no members, and each director has one vote. Since its creation a majority of NMTV's board of directors have always been members of minority groups. At present NMTV has four directors: Dr. Paul F. Crouch, a Caucasian male; Mrs. Jane Duff, an African-American female; Rev. Phillip Aguilar, an Hispanic male; and, Dr. E.V. Hill, an African-American male. Dr. Paul F. Crouch, who holds ownership interests in 12 other commercial television station licenses, and is the founder and president of Trinity Broadcasting Network (Trinity), has always been a member of NMTV's board of directors. NMTV has twice applied to the Commission for approval of assignment applications pursuant to the minority exception allowing a principal an interest in 14 broadcast stations if at least two of the stations are owned by "minority-controlled" corporations (Section 73.3555(d)). In the context of NMTV's first assignment application for KMLM-TV, Odessa, Texas, the Commission staff requested further information about the organization's organic documents--its articles of incorporation and bylaws--and when those were provided approved the assignment application. NMTV subsequently requested approval to the assignment of a construction permit in Portland, Oregon. That assignment was also approved by the Commission under the minority exception to the multiple-ownership rules.

NMTV recently requested the Commission's consent to the assignment of WTGI-TV, Wilmington, Delaware, which it was

purchasing subject to bankruptcy court approval. A party filed a petition to deny against NMTV's application alleging that NMTV was "sham" corporation and that it was "front" for Trinity Broadcasting Network. In response to that petition the Commission requested NMTV to answer 20 questions which delved into issues far afield of whether its directors were the owners of the corporation and sought information concerning the principals' decision-making processes and their responsibility for day-to-day station operation, issues which had nothing to do with the station's ownership. NMTV provided a voluminous response to these Commission questions, but before the Commission could act with respect to the application NMTV's application was dismissed because the bankruptcy court's approval expired. The bankruptcy court's action, and NMTV's subsequent dismissal of its application, left the issues raised by the Petition to Deny unresolved, and has paralyzed NMTV's efforts to acquire other broadcast facilities until they are resolved.

In this request for Declaratory Ruling NMTV incorporates by reference the response filed with respect to the Wilmington, Delaware application. The information previously filed with the Commission in connection with its assignment applications, and NMTV's response made clear certain facts, such as the fact that NMTV is: a properly organized and operating corporation; an independent corporation under the laws of the States in which it

is organized and qualified to do business; has its own payroll, pays its own taxes, and hires and fires its own employees.

The facts also show that NMTV has close ties with Trinity Broadcasting Network. Two of NMTV's directors are salaried employees of Trinity Broadcasting Network and all but two of the corporation's officers are salaried employees of Trinity. NMTV receives favorable rates on construction financing loans from Trinity which are repaid out of revenues realized from a program affiliation agreement between NMTV and Trinity. NMTV utilizes the same consultants, such as engineers and attorneys, as are used by Trinity.

In this Request for Declaratory Ruling NMTV argues that it fully complies with both the letter and intent of section 73.3555(d) of the Commission's rules, in that its ownership, as defined by traditional Commission policy and case law, is controlled by members of a minority group. No further showing, such as a showing of minority principal involvement in station management, is required. The Commission at first resisted providing any incentives to minority ownership in its multiple-ownership rules. The Commission's rationale in adopting the minority-ownership exception to the multiple-ownership rules which it had first rejected concentrated on ameliorating a specific problem, the lack of funding for minority television station acquisitions. The Commission's response to this specific problem was equally specific. To permit group owners to provide

financial assistant to prospective minority owners the Commission adopted a narrowly defined exception. The Commission adopted straight-forward definitions to implement this policy, i.e.,--that "minority-control" as used in the Commission rules means 50 percent or more minority ownership. This formulation, and the policy behind the formulation, was much narrower, and had narrower objectives, than the Commission's stated policies with respect to distress sales and tax certificates, or its policies with respect to promoting minority integration into the ownership and management of broadcast facilities, as set forth in the Commission's Statement of Policies on Minority Ownership of Broadcast Facilities. In the multiple ownership context the Commission's objectives were (and are) best served by a narrow focus on ownership. In other contexts, where the government was providing a direct tax subsidy for minorities, the Commission's objectives were more broadly defined as "minority ownership and management." Promoting minority management is not one of the Commission's goals in adopting the multiple ownership rules.

Despite Trinity's close ties with NMTV, NMTV is still a separate corporation, and neither Trinity nor any other organization has a right to control the votes of NMTV's minority directors or otherwise effect the decisions of NMTV's directors concerning the programs, plans or policies of NMTV.

Accordingly, NMTV is and has been eligible under both the letter and spirit of the minority exception to the multiple ownership rules.

In Re: Request of:

NATIONAL MINORITY TV, INC.

Regarding Application of Multiple
Multiple Ownership Rule 73.3555(d),
The 14 Station Exception

TO: The Commission

REQUEST FOR DECLARATORY RULING
OF NATIONAL MINORITY TV, INC.

National Minority TV, Inc. ("NMTV"), licensee of KNMT(TV), Portland, Oregon, by its undersigned counsel and pursuant to Commission rule 1.2, 47 C.F.R. § 1.2 (1990), hereby respectfully requests a declaratory ruling regarding the application of the 14 station ownership limit afforded minority-owned entities under

Commission rule 73.3555(d) to nonprofit (corporated) organizations.

I. Factual Context

A. NMTV's Corporate Status and Background

1. NMTV is a California Nonprofit Corporation Organized on September 16, 1990.¹ From its incorporation until November 1990, it had the same three directors: Paul F. Crouch, Mrs. P. Jane Duff, and Rev. Philip David Espinoza. Mrs. Duff is an African-American female, and Rev. Espinoza is an Hispanic male. In November 1990, Rev. Espinoza resigned from NMTV and was replaced with Rev. Philip Aguilar, also an Hispanic male.² In early October, 1991 a fourth director was added to NMTV's board, Rev. E. V. Hill, an African-American male. A majority of NMTV's directors have always been members of minority groups.

2. NMTV's organic documents provide that the corporation's directors are its members, are self-perpetuating, and have only one vote. For example, Section 9, Quorum, of Article III of NMTV Bylaws, states:

A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article III [which permits a majority of directors present at a meeting whether or not they constitute a

Corporation's Law, especially those provisions relating to (a) a direct or indirect material financial interest, (b) appointment of committees, and (c) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken as approved by at least a majority of the remaining quorum for that meeting.

Moreover, Article II, Section 3, Termination of Membership, of NMTV's Bylaws provides:

The membership of any member shall terminate upon occurrence of any of the following events:

- (a) the resignation of the member;
- (b) the death of the member;
- (c) the determination by a majority of the board of directors that such termination would be in the best interest of the corporation. Such a determination by a majority of the directors may be without cause.

3. NMTV operates in full compliance with the laws of the state of California. It is also qualified to do business in the states of Texas, Oregon, and Delaware, and it operates in compliance with the laws of those states as well. NMTV is recognized by the IRS as a tax-exempt 501(c)(3) organization, and is tax exempt in the States of California, Texas and Oregon. All of the assets of NMTV are irrevocably dedicated for charitable purposes, and NMTV is not operated for private gain. NMTV also operates a charitable relief program known as "His Hand Extended." Under

September 24, 1991 in connection with BALCT-910329KE and that response is incorporated by reference herein (hereinafter "NMTV Response").

this program food and clothing are collected and distributed to the needy in the Portland area.

4. NMTV's directors include Dr. Crouch, who is the president of the Trinity Broadcasting Network ("Trinity"). Trinity and its Trinity affiliated organizations own and operate 12 commercial television stations.³ Trinity was started in 1973 and over the past 18 years it has become the largest group owner of religious television stations and low power television/translator facilities in the country. Arbitron rates Trinity as the number one religious program service in the United States.

5. Director Rev. Aguilar founded Set Free Christian Fellowship as a church in 1982. Since then the church has grown in membership, and currently over 4,000 participants attend regular worship services. Set Free Christian Fellowship is located in Anaheim, California, in an inner city area that is economically depressed with high levels of crime and substance abuse. The

3/ Those stations, all of which are UHF facilities, are as follows:

KTBN-TV, Channel 40, Santa Ana, California
WLXI-TV, Channel 61, Greensboro, North Carolina
WDLI-TV, Channel 17, Canton, Ohio
WHSB-TV, Channel 63, Monroe, Georgia
KPAZ-TV, Channel 21, Phoenix, Arizona
KTBO-TV, Channel 14, Oklahoma City, Oklahoma
KTBW-TV, Channel 20, Tacoma, Washington
WHFT-TV, Channel 45, Miami, Florida
WKOI-TV, Channel 43, Richmond, Indiana
WCLJ-TV, Channel 42, Bloomington, Indiana
WTBY-TV, Channel 54, Poughkeepsie, New York
KDTX-TV, Channel 58, Dallas, Texas

church's primary ministry is to reach out to the community's
needy and drug addicted, and it operates several homes to provide
housing. food and clothing to assist church members, recovering

operates soup kitchens, and provides many needed services to the
needy and disadvantaged members of the Watts community. Dr. Hill

has served as a member of numerous national committees and

for day-to-day management of the corporation, receives reports from station managers, and is responsible for hiring and firing personnel. Mrs. Duff generates and signs purchase orders for

13. NMTV has operated two full power television stations, KMLM, Odessa, Texas and KNMT, Portland, Oregon. In addition to its operation of KNMT, NMTV is the permittee or licensee of the following low power television facilities:

- K33DE, Little Rock, Arkansas (license)
- K56DZ, Fresno, California (license)
- W26AU, Wilmington, Delaware (permit)
- W18AY, Portland, Oregon (license)
- W62BV, Charlotte, North Carolina (license)
- W24BK, Columbus, Ohio (license)
- W57BK, Toledo, Ohio (permit)
- W68CD, Toledo, Ohio (license)
- W51BR, Columbia, South Carolina (permit)
- W58BQ, Greenville, South Carolina (permit)
- K36CJ, Salt Lake City, Utah (license)
- W52BD, Huntington, West Virginia (permit)

While the Odessa facility was sold on April 19, 1991, when NMTV operated both stations in 1990 it had more than 13 full time employees, and 6 part time employees. Of those employees (full and part-time) 26 percent were minorities and over 36 percent were women. Currently, as reflected in NMTV's 1991 Annual Employment Report (FCC Form 395-B) for KNMT, NMTV has seven full time employees, three of which are minorities (nearly 42 percent). This is particularly noteworthy since Portland has an extremely small minority population, as does the Pacific northwest generally.⁵

5/ The FCC's Renewal Branch reports that the labor force statistics for Portland include 2.4 percent Blacks, 1.9 percent Hispanic, 2.1 percent Asian, 0.6 percent of Native Americans and Pacific Islanders, and 43 percent women.

C. NMTV is Well Known to the Commission, and it has Twice Previously Been Approved to Acquire Unbuilt Construction Permits Under Commission Rule 73.3555(d).

14. NMTV, its purpose and its organization, is well known to the Commission. NMTV has acquired, constructed, and operated

state of California, and possesses all corporate power necessary to construct, own and operate [channel 42] and carry out the provisions of this agreement. Buyer's president, Paul F. Crouch, however, is an officer and a director of the organizations specified in Exhibit C, which in the aggregate holds interests in the maximum number of television facilities permitted by nonminority controlled organizations under Commission rule 73.3555, 47 C.F.R. § 73.3555. Accordingly, Buyer will be required to establish compliance with rule 73.3555(d)(1)(A) and 73.3555(d)(2)(A) ... before the assignment specified herein can be approved by the FCC. Buyer further represents and warrants that it will take any and all reasonable steps to establish compliance with Commission rule 73.3555 ... as specified in this paragraph (a). However, in the event the FCC does not approve the assignment for reasons associated with rule 73.3555 and its interpretation and/or application thereof, then this agreement shall automatically become void and Buyer and Seller shall be relieved of any and all obligations to the other whatsoever without liability.

This provision clearly demonstrated NMTV's intention to be fully compliant with the multiple-ownership rules, and provided that if the Commission did not believe NMTV and its proposed acquisition of channel 42, Odessa complied with the multiple-ownership rules the entire transaction would be voided. Further, and significantly, in response to a staff request NMTV filed copies of its articles of incorporation and bylaws as a supplement to the Odessa Assignment on April 14, 1987. These charter documents, which remain in effect today, unambiguously provide that each of the directors of NMTV have one equal vote in all matters. Based on the submission of these documents and the governing provi-

sions, and without further inquiry concerning any other matter the Commission granted the channel 42 assignment.

16. In December 1987 NMTV filed its second assignment application, this time for channel 24, Portland, Oregon (hereinafter "Portland Assignment"). Once again, NMTV acquired the construction permit from an entity, Greater Portland Broadcasting Corporation, which had been unable to make any progress on station construction. In that application it made virtually the identical disclosure regarding Mrs. Duff, Dr. Crouch and the Trinity Broadcasting Network. The December 17, 1987 Asset Purchase Agreement for channel 24 provided at paragraph 7.b. a full disclosure on Dr. Crouch's position as an officer and director of the Trinity Broadcasting Network, and its associated operating companies. Mrs. Duff's broadcast related interests were again disclosed. As in the channel 42 assignment, a detailed showing was provided in the channel 24 assignment again describing the history of NMTV and noting that two of its directors were minorities. At that time, since NMTV's corporate documents were already part of the public record, it was not necessary to resubmit those documents. The Commission granted the channel 24 assignment and the sale was consummated on December 19, 1988. KNMT-TV, channel 24, signed on November 16, 1989 (BALCT-891205KH), a scant 11 months after consummation.

17. On March 29, 1991 NMTV filed an assignment application to acquire WTGI-TV, Wilmington, Delaware from Delaware Valley Broadcasters, Limited Partnership, Debtor-In-Possession (BALCT-910329AE). WTGI-TV had been in bankruptcy since February 1987, and under the continuing jurisdiction of the United States Bankruptcy Court for the District of Delaware (Case No. 87-69). WTGI-TV had submitted reorganization plans which, for numerous reasons, either failed or were unacceptable to the Bankruptcy Court and/or Delaware Valley's creditors. Pursuant to the directions of the Bankruptcy Court, public bids for the acquisition of WTGI-TV, and all of the assets of Delaware Valley, were gathered. NMTV submitted an initial bid during this process in December 1990 and NMTV's bid was ultimately approved.

18. In the WTGI-TV assignment application NMTV, as it had done in the Odessa and Portland assignments, provided a detailed listing of the broadcast holdings of its principals, including Dr. Crouch and Mrs. Duff. In addition, NMTV included a limited waiver request of 73.3555(d)(1) so the processing of the WTGI-TV assignment application could proceed without delay even though the sale of KMLM(TV), Odessa, Texas (BALCT-901217KI), which had been approved on February 27, 1991, had not been consummated.⁶ NMTV made the same disclosures and representations in this

⁶/ Before a ruling on this waiver request became necessary, NMTV consummated the sale of its KMLM, Odessa facility.